
BOARD OF SELECTMEN

MEETING MINUTES

8/5/08

The Board of Selectmen met in the Town Hall, Joseph F. Bilotta Meeting Room as scheduled with Thomas Alonzo, Paula Bertram, Steven M. deBettencourt, Thomas Mason, Dave Matthews and CAFO Kerry Speidel present. Meeting opened at 7:01 P.M. with the Pledge of Allegiance.

PUBLIC DISCUSSION

ANNOUNCEMENTS

Chair expressed appreciation to all those who attended the cardboard boat race and the memorial for Roger Gilchrest that was held last Monday at the regular band concert. Appreciation for gifts of Plaque from Worker's Credit Union and the donation/installation of the granite marker from Proctor's Landscaping.

Bob Gniot, 17 Horizon Island Road, would like to present a slide show commemorating September 11th, taken from his past visit to New York City, and requested a venue to display at either the lower town common or the library. Board approved use of the lower common however, directed Mr. Gniot to check with the Library Director for a rain date as they schedule their events.

Robert (Mickey) Herrick, Patti and Ken Ricker came to express their appreciation for the fundraising event that the board approved on the Lakefront as it was a huge success.

APPOINTMENTS

1. 7:15 PM – Public Hearing, Dog Complaint – 441 Townsend Harbor Road – Paula Bertram and Thomas Mason both disclosed that they are neighbors of the defendant, not abutting and do not feel that this would in any way impact their judgment on the hearing/complaint.

Chairman opened the Public Hearing on the 441 Townsend Harbor Road Dog Complaint: In accordance with M.G.L. Chapter 140, §157, a public hearing has been scheduled for August 5, 2008 @ 7:15 PM, in the Joseph F. Bilotta Conference Room, 2nd floor, Town Hall, 17 Main Street, Lunenburg. Hearing is to review and determine what action may be deemed necessary upon the investigation report of the Dog Officer. Said investigation was ordered by the Chief Administrative Financial Officer (CAFO), Kerry Speidel following numerous complaints of vicious or barking dog(s) owned or harbored by James Ferrari, 441 Townsend Harbor Road, Lunenburg, MA. Reviewed the Dog Hearing Procedure as follows:

1. **Announce ground rules**
 - a. **Official Hearing**
 - b. **Everyone testifying must be sworn in**
 - c. **Order of Proceedings**
2. **Swear in complainant (can also swear in anyone who will provide testimony)**
3. **Complainant presents his/ her testimony**
4. **Owner/ Keeper presents his/ her testimony**
5. **Witnesses testify**
6. **Board asks questions & deliberated**
7. **Board Makes a Finding**
8. **Board determines option**

Possible Findings:

1. **That the dog at issue constitutes a "nuisance" to the community, and the dog constitutes a nuisance because:**
 - a. **It has a vicious disposition; OR**
 - b. **It barks excessively; OR**
 - c. **It creates some other disturbance (needs to be explained).**
2. **That the dog, as a result of such barking or other disturbance, causes annoyance to a sick person within the jurisdiction of the responsible board or official.**

Range of Options if there is a Finding:

1. **Restraint**
2. **Banishment**
3. **Euthanization**

If a finding is made, the owner/ keeper should be made aware that there is an appeals procedure set forth in MGL Chapter 140, Section 157.

Original complainants were in attendance; Alfred and Lisa Gravelle, and James Shearer.

Mr. James Ferrari submitted the attached letter to the board stating that he would not be attending the Public Hearing.

The complainants and residents who would testify were sworn in by Laura Williams, Notary Public to "solemnly swear or affirm that the testimony to be given in this matter will be the truth, the whole truth and nothing but the truth".

Alfred Gravelle of 445 Townsend Harbor Road read a statement to the board, basically has been forced here because of a neighbor (Mr. Ferrari) who is so disrespectful and is operating a business of breeding dogs. The Gravelle's noted that they have been through this in the past, presented a copy of the assessor's map to show the closeness of the neighborhood. According to Mr. Gravelle, Mr. Ferrari currently has 5 kennels on the property and recently the dogs have had two litters. Mr. Gravelle played an audio tape that was taken at various times, (contained numerous dogs, barking constantly) 1:00 AM, 5:00 AM it's a constant issue. He has approached Mr. Ferrari and asked why this is taking place and had been told that the dogs would be leaving. The constant barking and smell has caused them to keep their windows closed, one dog also aggressively came at both Mr. Gravelle and his wife and she fell trying to get away, spraining her ankle. This has been going on for 4 months and for the past 4 weeks Mr. Ferrari has been cleaning, but this will only continue. There is no way that a kennel should be kept in this type of area in the community. Presented a number of pictures with the dogs on their property, including a dead cat with one of the dogs. Mr. Gravelle stated that in some cases they can be friendly but in some instances they're unpredictable and have been vicious at one time or another. Also, presented a picture of 4 of the kennels, another is located on other side of house.

Mr. Shearer presented and read the attached letter to the board, to be entered into the record.

Chairman read the public nuisance petition form that included the following complainants: Alfred and Lisa Gravelle, Deborah Sawyer, John Sawyer, Tracy Griffin, Peter Doherty, Robert Mullennix, Paul Porter and James Shearer. Also read the attached letter from Mr. Mullennix into the record.

Mr. Mark Deming, 445 Townsend Harbor Road informed the board that in many ways Mr. Ferrari has been a good neighbor but he needs to accept responsibility for his dogs and we've made many attempts to speak with him. Related incident of German shepherd, that was left out basically to die. The smell has become so overpowering that people can't even be out in their own yard because of the feces.

Keri Deming, 445 Townsend Harbor Road spoke on a number of incidents when she's jogging and it's always an issue when the dogs are out, never certain if they're going to be aggressive or not as they have been on some occasions.

Peg Manser, 422 Townsend Harbor Road reiterated everything that has been said and that she too, has been approached by one of the pit bulls, showing their teeth and growling. She did call the police and was told that it wasn't within their jurisdiction and not a lot that can be done about this and has called Mr. Ferrari numerous times. Neighbors can't even leave trash out and the dogs are very much a deterrent to the quality of life.

Christopher Strus of 596 Townsend Harbor Road stated that on July 8th two of Mr. Ferrari's dogs came into his yard and mauled their cat, who was hospitalized for two days. Would ask the board to consider if these were your pets or children. We're here because these dogs are unrestrained, they run wild and have attacked my cat and can't believe that he gets away with risking the safety of the neighborhood.

Dolly LaRoche, 433 Townsend Harbor Road, told the board of incidents that have occurred with her miniature Australian shepherd and these dogs would approach and would be aggressive during her daily walks with her dog. The (Ferrari) dogs have come to her property and growled at her and there are always two against one. Also has small children that come to visit and can't even be comfortable, have all windows closed and at night and have to walk with a can of raid and water guns so that they'll back off.

Chairman read the attached redacted memo into the record as plaintiff did not attend the public hearing. This is the only testimony on behalf of the owner and keeper, no one else spoke on their behalf.

Per Kathy Comeau, this has been an ongoing problem for a long time. The dogs are always loose and the police have been notified and responded on numerous incidents. She has also spoken with our Board of Health, and was informed by the agent that he was approached by one of the dogs and noted that there has been cleanup taking place. Officer Barney informed me that the smell was horrible and Fallon Animal Clinic recently treated two of these dogs because of quills, so they are loose. Paperwork wasn't in order for the required shots so he was not able to license. He (Ferrari) doesn't listen and informed me that he wasn't going to come, and to be prepared for a fight. For a number of years it's been good and up until a couple of years ago seemed to be all right. You've heard the tape, and that's what it's like all the time, they have a scanner so when they hear the report they get the dogs in. My assistant, Alisha Flagg is also here and has on numerous times seen the dogs loose on her way to her father's home. Unless I see them loose, there's nothing I can do. These people are all telling you like it is and if you go down there, you'll hear this. When the dogs are together, they pack up and are nasty and Officer Barney did tell him that one of the dogs was not a threat to him, and he wasn't, but that doesn't mean that they're not a threat to other people. I have asked Mr. Gravelle to do this for a number of years.

Tom M., seems as there are two issues, the public nuisance and the four dogs

Chairman questioned whether this is a decision based upon the whole issue or the four dogs.

Discussed the incident of the dead cat and if in fact Mr. Deming did see the dogs with the dead cat, which he did not, but noted the fresh adult dog size paw print, but did not actually see the dogs attacking.

Discussed the violation of state law kennel license and in Lunenburg it's been changed and we have a bylaw pertaining to this and per Kathy Comeau he does not currently have a kennel license which he absolutely should have.

Mr. Shearer read MGL C. 136, Kennel (definition) which is spelled out as more than three dogs.

Chair questioned if there are rules governing dogs under the Hickory Hills Association and Paula is not aware of specific language pertaining to dogs, except that they are prohibited from beach front property.

Mr. Gravelle informed the board that 4 of the kennels are near his home and have approximately 10 german shepards and the pit bulls are in a kennel on the other side of the house, probably right now between 12 and 15 dogs on the property. Have had issues over the years and haven't wanted to do this but there comes a point in time when have to take action. He has seen the dogs tearing apart garbage on his lawn all the time and has to regularly pick up dog leavings before mowing his lawn.

Sue Pelletier, 471 Townsend Harbor Road reported that several times the shepard has taken her trash, and they live on the point of Townsend Harbor and Sandy Cove and from 4:30 to 6:00 the barking is continuous, it doesn't sound like regular dog barking. They're actually crying she always has to bring grandchildren inside just in case. Twenty years ago we dealt with the dogs and at that time they weren't that loud, now its constantly and we can hear it all the way down to our house.

Chris informed the board that it was the black and brown pit bull that attacked their cat and did see them both (pit bulls) attack.

Kathy had asked Mrs. Straus to identify the dogs that attacked her cat and brought her to the Gravelle's property, she also stated that the smell was terrible.

Steve asked Kathy where she would like to see this go and she stated that she would like to see it that Mr. Ferrari didn't have dogs. It just isn't going to end, and he's told her that he wasn't selling puppies but the ads are in the want ads and on the internet. There are a number of options that the board can take.

Board discussed the two issues, the puppy mill and the nuisance dogs and have access to the four dogs and the complaints that were lodged about them. First need to identify available remedies on those dogs, and then to remand to the zoning enforcement officer start issuing fines for violation of zoning bylaws. These are very flagrant violations and willing to have the zoning enforcement officer every day assess fines. The incessant barking could apply to all the dogs, could make multiple findings in this case.

Discussed the public nuisance issue, garbage, and as such the public nuisance is towards the four dogs, they are noted in the complaint, the barking and large number of dogs on the property fall under a different category.

Per CAFO, this board has jurisdiction over dogs that are being a nuisance and the zoning issues are another thing.

Paula asked the Dog Officer if she were in favor of euthanization or banishment of the adult dogs. Kathy's recommendation is for banishment of the four directly named dogs. Paula noted that several of the complainants gave testimony that the dogs have a violent disposition and asked Kathy if in her opinion they would continue to be violent. Kathy responded that it is her opinion that the dogs are only violent when they are in a pack and given a different environment she felt they would not pose a threat. Tom M., the black and brown pit bull would come under the dangerous disposition, and the dogs as a whole in the kennel. The shepards bark excessively and create some other nuisance, rubbish etc., Mr. Shearer reiterated that last year the black pitbull and the german shepard had aggressively accosted he and his wife as they were crossing the frozen lake.

Alfred Gravelle informed the board that the brown german shepard has never been seen outside of the cage.

Paula made a motion that the Board of Selectmen rule that the black pit bull the brown pit bull and the german shepard known as Ducey be banned from the Town of Lunenburg as being a public nuisance. Noted that this board could seek a court order as to removal of the dogs.

CAFO recommended a timetable for banishment and if he appeals then while the appeal is running it's course the dogs be placed in a more specific facility.

Per Kathy it depends upon the number of dogs and he would be responsible for board on the dogs.

Paula amended the motion to state that in the event the owner appeals, the dogs shall be placed in a kennel at the owner's expense during the appeal.

Chair called for vote to amend the first vote, seconded by Steve, voted unanimously. Called for vote on amended motion, Steve seconded, voted unanimously to approve.

Tom M., move that the town bannish all but three dogs of the owner's choosing from the kennel for excessive barking and as being nuisance dogs to be placed in a kennel at the owner's expense.

CAFO cautioned that Board of Selectmen may be overstepping their authority, as we don't know how many dogs there are. May want to pursue in another way.

Steve seconded motioned, voted unanimously. Tom M. also noted on the motion that as an addendum to the boards decision requests to the Board of Health and Zoning Officer investigate the claims presented at the public hearing Steve seconded, voted unanimously.

Decision will be written and sent to the dog owner, citing appeals process, hearing closed at 8:55 PM

CURRENT BUSINESS

1. CAFO Updates –

- Informed the board that this week, DeFelice has commenced mobilization on the Meadow Woods project installing hay bales and will be cutting into the roadway next week. First construction meeting will be held Tuesday, September 9th at 10:00 AM and will continue to be held on the first Tuesday of the month at 10:00 AM, here in the town hall.

2. Minutes - Board of Selectmen 7/22/08 reviewed and signed.

Warrants - #3A 08, 7/25/08 - \$285.00, #3P 09, 8/7/08 - \$452,861.65 and #4 09, 8/5/08 - \$446,563.82 reviewed and signed.

3. Action File Issues – none

4. Special Town Meeting, Open / Close Warrant – Paula moved to open the special town meeting warrant effective Tuesday August 5th and close Monday, August 11th at 5:00 PM, voted unanimously.

5. Ambulance Abatement Procedure – Kerry reviewed the attached sample procedure for abatement of ambulance fees submitted by Chief Glenn. Informed the board that we would only be taking applicants to you who met income criteria. Currently we contract out to Coastal Medical Billing and they have a significant process, in most cases the patient doesn't even see the bill until it's been through the insurance companies and Coastal will usually follow up with the patients to obtain insurance information. The town has been running at about 80 to 85% collection rates, currently we are looking at 14 outstanding accounts totally approximately \$8,000 over a period of two years. Usually the bills that come back to the town have been determined as uncollectable.

Two issues which in some cases are tied together, both income and those that are uncollectable, process will still continue.

CAFO and Chief will implement this process, income levels are in accordance with HUD guidelines, to include language that insurance avenues have been exhausted prior to an abatement being issued.

6. FY'08 Year End Transfers, MGL C. 44, §33B – Board reviewed and unanimously approved the attached line item transfer requests for FY'08, these requests have been presented to the Finance Committee and was approved at their last meeting.

OLD BUSINESS

1. Committee Updates –

- Dave informed the board that he attended the last Finance Committee meeting and discussed pursuing an energy task force to see if we can't aggressively save 15% in energy costs, simple things to look at ways to save. Paula added that this is something that has been brought up repeatedly and there are a number of things that we can do town wide and may be grant funding that we could pursue and the utility companies can also assist.
- Paula attended Planning Board meeting of 7/28/08 and gave the Board the following updates:
 - A conceptual plan has been submitted for the Aro/Levite property and the board is planning a workshop to discuss this specific plan.
 - The Planning Board is actively looking into possible land sites that would accommodate industrial growth under 43D..
 - A complaint had been received relative to development on Lena Lane. The reviewing engineer, conservation agent and DPW Superintendent reviewed and found that the construction has been conducted in accordance with requirements and there is not an issue.
 - Planning Director is currently evaluating information to be added to Town website and will report back to the Board.
 - A purchase and sale has not yet been executed for the CVS project, however the sewer clearance plan was submitted directly to Leominster and did not go through the proper townchannels, the Planning Director will be following up on this.
 - Tri-Town construction will be moving forward in a phased approach. Planning Director met with the Fire Chief and the DPW Director and fire access needs to be addressed. A modification is expected to be submitted.
 - Next Planning Board meeting is August 11th.

2. Chapter 61B, 460 Howard Street – Tom M. informed the board that the ad-hoc committee has met twice and feels that pursuing acquisition of this property is an option and are in fact gathering mode at this point. Working with town counsel to develop a broad warrant article to address the issues.

Mr. Gerald Hyde, 912 Mass Ave. informed the board that he's been investigating the property (Howard St.) to see if we could run a 50 foot right of way along one edge of the property and unfortunately there isn't a straight line into that property. While perusing around the Assessor's land records happened to notice that there was a right of way going nearly to the town land, and have a copy of the deed for the first property and has presented this information to the committee and the CAFO.

3. Building Reuse

- Acceptance of Gift / Maki's – CAFO updated on the status of the Ritter Building, all of the mold remediation work has been completed and a lot of extensive work has been accomplished. The original bid was \$19,500 and there was a change order in the amount of \$2,200 due to asbestos abatement. Currently in the process of obtaining bids, and because of the dollar amounts will require different processes. Should have most of the framing done within the next week. Also, have contacted the Sheriff's office and received tentative approval to paint the interior of the facility. Still feel that we're on target for getting the project done and Mike Sauvageau has been directing the project and has contacted a number of businesses. Recognized the donation from Maki's building center's donation of 11 interior doors, we may also have a donation of all of the paint. Per MGL

Chapter 44, §53A½, the board is required to vote to accept a gift, as such, Dave motioned to accept the gift of 11 interior doors, Steve seconded, voted unanimously.

APPOINTMENTS/REAPPOINTMENTS

1. Resignation, Martin Lawlor – Dam Keeper – Chair read the attached letter of resignation into the record and letter of appreciation to be forwarded.

EXECUTIVE SESSION

None

Being no further business board voted unanimously to adjourn Regular Session at 9:28 P.M.

Respectfully submitted,

Laura Williams, Chief Administrative Assistant
Board of Selectmen